

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:07-CR-00270-F-1

No. 5:11-CV-00568-F

SANDY RAY YARBOROUGH,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent.

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ORDER

This matter is before the court on Sandy Ray Yarborough's Motion to Hold in Abeyance [DE-73, DE-74].¹ The Government has filed a Response in Opposition [DE-76]. The matter is now ripe for ruling. For the reason set forth below, Yarborough's Motion to Hold in Abeyance is DENIED.

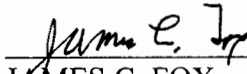
Yarborough moves this court to hold his section 2255 motion in abeyance until the Fourth Circuit Court of Appeals determines the question of cognizability in *United States v. Foote*, No. 13-7841.² As the Government points out, even if *Foote* may potentially impact the cognizability of Yarborough's challenge to his career offender designation, his argument is still barred by the appeal waiver contained in his plea agreement. *See United States v. Copeland*, 707 F.3d 522, 528-30 (4th Cir. 2013). For this reason, Yarborough's Motion to Hold in Abeyance [DE-73, DE-74] is DENIED.

¹Yarborough's initial attempt was a non-conforming document [DE-73], which was filed on March 12, 2015. At the court's direction, Yarborough filed a "conforming" motion [DE-74] on March 13, 2015.

²The question presented in *Foote* is whether a timely challenge to a sentence under *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc) is cognizable on collateral review.

SO ORDERED.

This, the 7th day of March, 2015.



JAMES C. FOX
Senior United States District Judge